



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0269, FRL-9996-58-Region 10]

Air Plan Approval; OR: 2018 Permitting Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve revisions to the Oregon State Implementation Plan (SIP) submitted on December 11, 2018. The revisions update the SIP to allow for electronic public notice of proposed major stationary source permits, add references to stationary source sampling requirements, make use of plain language, and correct errors. The EPA reviewed the submitted revisions and proposes to find they are consistent with Clean Air Act requirements.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2019-0269, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-6357, or hall.kristin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” is used, it means the EPA.

Table of Contents

- I. Background
- II. Evaluation of Submission
 - A. Division 12: Enforcement Procedure and Civil Penalties
 - B. Division 200: General Air Pollution Procedures and Definitions
 - C. Division 209: Public Participation
 - D. Division 216: Air Contaminant Discharge Permits
 - E. Volume I: Source Sampling Manual
- III. Proposed Action
- IV. Oregon Notice Provision
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background

Each state has a State Implementation Plan (SIP) containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. Section 110 of the Clean Air Act (CAA) requires each state to periodically revise its SIP. As a result, the SIP is a living compilation of regulatory and non-regulatory elements that are updated

to address federal requirements and changing air quality issues in the state.

Air quality regulations for the State of Oregon (“Oregon” or “the State”) are found in Chapter 340 of the Oregon Administrative Rules (OAR) and are generally implemented by the Oregon Department of Environmental Quality (ODEQ). On November 15, 2018, the State adopted new and revised air quality regulations that became effective November 16, 2018. Most of the adopted regulations implement Oregon’s new, state-only air toxics permitting program known as Cleaner Air Oregon, established in OAR Chapter 340, Division 245. The State did not submit the Division 245 Cleaner Air Oregon regulations for SIP approval. However, some of the regulations adopted in the state rulemaking package also make changes to rules in the federally-approved SIP. On December 11, 2018, Oregon submitted these SIP-related changes to the EPA for approval. The changes account for electronic public notice of proposed major source permits, add references to stationary source sampling requirements, make use of plain language, and correct errors. For more details, please see the December 11, 2018 submission in the docket for this action.

II. Evaluation of Submission

A. Division 12: Enforcement Procedure and Civil Penalties

Division 12 contains enforcement procedures and civil penalties for violations of environmental regulations. In the submission, Oregon made minor edits to this division for clarity and to correct errors. For example, Oregon replaced the phrase “pursuant to” with “under” because the word has a plainer meaning. In addition, the State corrected references to the federally-defined term “Best Available Control Technology.”

We reviewed the submitted changes and propose to find that Division 12 continues to provide the ODEQ with adequate authority to enforce the SIP as required by section 110 of the

CAA and 40 CFR 51.230(b). Consistent with our prior action on October 23, 2015, we propose to approve the changes to this division only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP (80 FR 64346). We are not proposing to incorporate the changes by reference into the Code of Federal Regulations (CFR), however, because the EPA relies on its independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

B. Division 200: General Air Pollution Procedures and Definitions

Division 200 contains general procedures and definitions used in the State's air quality program. In the submission, Oregon made minor changes to clarify rule language throughout the definitions section of this division. The State also revised the definition of "continuous monitoring systems" to reference the Oregon Continuous Monitoring Manual, adopted in OAR 340-200-0035. Likewise, the State clarified the definitions of "source test" and "volatile organic compounds" to reference the Oregon Source Sampling Manual, adopted in OAR 340-200-0035. Oregon added a new definition for "toxic air contaminant" to account for the new, state-only air toxics permitting program, and made conforming changes to related definitions in Division 200. However, these revisions have limited impact on the federally-approved Oregon SIP because the revisions primarily relate to the new, state-only air toxics rules which are not part of the SIP and were not submitted to the EPA for approval.

Division 200 also includes key reference materials used throughout Oregon air quality rules. The submission revises citation dates for these reference materials. First, all references to federal requirements in the CFR now refer to the July 1, 2018 version. Second, all references to the Oregon Source Sampling Manual now refer to the November 2018 edition (also submitted for approval into the SIP).

We reviewed the submitted changes to Division 200 and propose to approve and incorporate them by reference into the Oregon SIP, except all references to “toxic air contaminants” and the state-only air toxics permitting program set forth in OAR Chapter 340, Division 245, because these provisions were not submitted to the EPA for approval. We note that the State’s submitted update to reference the July 1, 2018 CFR was approved by the EPA in a prior action. Please see our recent rulemaking entitled “Air Plan Approval; OR: Infrastructure Requirements for the 2015 Ozone Standard” published on June 6, 2019 (84 FR 26347).

C. Division 209: Public Participation

Division 209 contains rules to notify the public of certain permit actions and give the public an opportunity to participate in the permitting process. In the submission, Oregon removed the requirement to publish notice of draft major new source review (NSR) permits in the local newspaper and added the option to publish notice on a publicly-accessible website, along with the draft permit. These changes are consistent with recent EPA rules published on October 18, 2016 and intended to modernize the process (81 FR 71613).

Oregon also made updates to this division to address the new, state-only air toxics permitting program. However, Oregon submitted these public participation rule changes only to the extent the rules apply to 1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and 2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

We most recently approved revisions to Division 209 on October 11, 2017 (82 FR 47122). We found that Division 209 was consistent with the CAA and regulatory requirements

for public notice of new source review actions in 40 CFR 51.161 Public availability of information, 40 CFR 51.165 Permit requirements, and 40 CFR 51.166 Prevention of significant deterioration of air quality. After reviewing the submitted changes, we find that Oregon's public participation rules continue to meet the CAA and the EPA's NSR public notice requirements.

D. Division 216: Air Contaminant Discharge Permits

Oregon's Air Contaminant Discharge Permit (ACDP) program is both Oregon's federally-enforceable non-title V state operating permit program, and the administrative mechanism used to implement the notice of construction and NSR programs. There are six types of ACDPs under Oregon's rules: Construction, General, Short Term Activity, Basic, Simple, and Standard. In the submission, Oregon made changes to this division to use plain language, clarify requirements, and reference the new, state-only air toxics permitting program. Oregon also revised the applicability and jurisdiction section of this division to spell out that a source may not continue to operate if the source's ACDP expires, or is terminated, denied, or revoked. In the ACDP application requirements section, Oregon made changes to require that sources seeking new or renewed permits consider the lead time the ODEQ needs to process and issue permits and apply earlier in the process. Oregon also set application renewal deadlines and clarified the required contents of applications.

Certain SIP-approved rules in Division 216 are used to implement both the SIP-approved permitting programs and the new, state-only air toxics permitting program. In the submission, Oregon made clear that the State requested approval of the submitted changes to Division 216 for purposes of SIP permitting only.¹ We reviewed the submitted changes and find that the

¹ Oregon submitted ACDP permitting rule revisions only to the extent that the rules apply to 1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as

program remains consistent with section 110 of the CAA and EPA's implementing regulations.

E. Volume I: Source Sampling Manual

The Oregon Source Sampling Manual contains procedures for measuring and sampling exhaust gas streams from stationary sources in accordance with the requirements of Oregon's air quality rules in OAR Divisions 200 through 268. We most recently approved changes to the Source Sampling Manual on October 11, 2017 (82 FR 47122). Since then, Oregon updated Volume I of the manual to account for the new, state-only air toxics permitting program and made clarifications and corrections throughout the manual. For example, the State clarified that sources must notify the ODEQ of all source sampling projects, whether they are required by the State or not, if a source seeks to rely on the test as evidence in an enforcement case or to demonstrate compliance with non-delegated federal requirements. Oregon also made clear in the manual that complex source testing programs may require 45 days or more for protocol approval by the ODEQ.

Oregon revised the sample replication section of Volume I to state that unless otherwise specified by permit, state rule, federal regulation, or ODEQ letter, each source test must consist of at least three test runs, and the emission results are required to be reported for each run individually and as the arithmetic average of all valid test runs. Oregon revised the sample postponement and stoppages section of Volume I to clarify that postponing a test run in progress because the source is not able to comply with a control equipment standard is not acceptable. Oregon specified that one bound copy of the source test report must be submitted within 30 days following field work, and an electronic version of the report may be submitted, in addition to the

determined by the EPA for the applicable geographic area; and 2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

bound copy.

We reviewed the submitted changes and find that Volume I of the Source Sampling Manual remains consistent with 40 CFR part 51, appendix M – Recommended Test Methods for State Implementation Plans and 40 CFR part 60, appendix A – Test Methods, and appendix B – Performance Specifications, for purposes of the emission limits and requirements approved into the SIP.

III. Proposed Action

The EPA proposes to approve, and incorporate by reference into the Oregon SIP, the submitted changes to the following sections of the Oregon Administrative Rules (OAR) Chapter 340, state effective November 16, 2018:

- Division 200 General Air Pollution Procedures and Definitions (0020, 0035);
- Division 209 Public Participation (0020, 0030, 0040, 0050); and
- Division 216 Air Contaminant Discharge Permits (0020, 0030, 0040, 0090, 8020).²

The EPA also proposes to approve, but not incorporate by reference, the submitted changes to the following sections, state effective November 16, 2018:

- Division 12 Enforcement Procedure and Civil Penalties (0030, 0053, 0054, 0135, 0140),
only to the extent the rules relate to enforcement of the requirements contained in the Oregon SIP; and
- ODEQ Source Sampling Manual, Volume I, 2018 Edition, only for purposes of the

² Divisions 200, 209, and 216 are proposed to be approved only to the extent the rules apply to 1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and 2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

emission limits and requirements approved into the SIP.

IV. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

V. Incorporation by Reference

In this rule, the EPA is proposing to include, in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in Section III. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond

those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 27, 2019.

Chris Hladick,
Regional Administrator,
Region 10.

[FR Doc. 2019-14989 Filed: 7/15/2019 8:45 am; Publication Date: 7/16/2019]